

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:07cv76**

<b>KATRIN MOONEY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>THE CATO CORPORATION,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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**THIS MATTER** is before the court on defendant's Motion to Dismiss (#5), plaintiff's Response (#6), and plaintiff's Amended Complaint. Even though defendant moved to dismiss, it did not Answer, leaving the door open to plaintiff to amend her Complaint. As a matter of law, defendant's Motion to Dismiss is mooted by the filing of the Amended Complaint. Taylor v. Abate, 1995 WL 362488, \*2 (E.D.N.Y.1995)<sup>1</sup> ("Defendants' motion to dismiss is addressed solely to the original complaint.... Consequently, upon the filing of the amended complaint, their motion is mooted and, therefore, denied."); In re Colonial Ltd. Partnership Litig., 854 F.Supp. 64, 80 (D.Conn.1994) (noting where "a plaintiff amends its complaint while a motion to dismiss is pending" the court may "deny[ ] the motion as moot"); Rathke v. HCA Management Co., Inc., 1989 WL 161431, at \*1 n. 1 (D.Kan.1989) (holding that "motion to dismiss ... became moot when plaintiff filed an amended complaint"); Gresham v. Waffle House, Inc., 586 F.Supp. 1442, 1444 n. 1 (N.D.Ga.1984) (same).

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<sup>1</sup> Due to the limits of ECF, copies of unpublished decisions cited in this Order are incorporated into the court record through reference to the Westlaw citation.

**ORDER**

**IT IS, THEREFORE, ORDERED** that defendant's Motion to Dismiss (#5) is **DENIED** without prejudice as moot.

Signed: August 20, 2007

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

